



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/589,650

09/07/2006

Kai Ming Sun

19442-6100

9996

57449

7590

07/07/2009

SHEEHAN PHINNEY BASS & GREEN, PA

c/o PETER NIEVES

1000 ELM STREET

MANCHESTER, NH 03105-3701

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

07/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/589,650	Applicant(s) SUN, KAI MING	
	Examiner NIKI M. ELOSHWAY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The amendments filed March 19, 2009 are sufficient to overcome the previous rejections under 35 U.S.C. 112, second paragraph.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Flynn et al. (U.S. 4,720,351). Flynn et al. teach a container 10, 11, 16 (shown in figure 1) including a body member 10, 11 with a at top end 11 and a cooling member 16 detachably engageable with the body member via Velcro or the like 19 (col. 3 lines 28-35). The body member is capable of holding a beverage. The cooling member is capable of containing a cooling agent. Note that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. When the cooling member is engaged with the body member, at least a major portion of said top end of the body member is closed and at least part of the cooling member extends into an interior cavity of the body member, as shown in figure 1. The cooling member includes a vessel member 16a and a top closure member 16b, wherein the top closure member 16b has a top closure cavity therein, shown partially in figure 1. The vessel member and the top closure are threadedly engageable via threads 20a, 20b. When the vessel member is directly engaged with the top closure member, the volume of the internal cavity of said at least

Art Unit: 3781

one cooling member is larger than the volume of the vessel member. this is shown by the space between the top rim of the vessel 16a and the top of the vessel closure 16b, shown in figure 1. The vessel can be made of metal as disclosed in col. 3 lines 43-52.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flynn et al. (U.S. 4,720,351). in view of Svehaug (U.S. 5,435,256). Flynn et al. disclose the claimed invention except for the seal. Svehaug teaches that it is known to provide a seal on an inner vessel (see element 30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Flynn et al. with the seal, as taught by Johnson, in order to prevent leakage of the contents within the vessel.

6. Claims 5, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solomon (U.S. 1,954,370) in view of Hall (U.S. 1,033,009). Solomon teaches a method of using a beverage container, including the steps of:

(a) providing a body member 5a with a top end 23. The body member being adapted to hold a beverage (page 1 lines 1-8)

(b) providing a cooling member 12', 26a detachably engageable with said body member via threads on 24. The cooling member is adapted to contain a coolable agent (ice) and includes a vessel member at 12' and a top closure member at 26a. The top closure member 26a has a top closure cavity

Art Unit: 3781

therein, shown in figure 4 at lead line 28. When the cooling member is engaged with the body member, at least a major portion of the top end of the body member is closed and at least part of the cooling member extends into an interior cavity of the body member, as shown in figure 1. When the vessel member is directly engaged with the top closure member, the volume of the internal cavity of the at least one cooling member is larger than the volume of the vessel member because of the inner cavity of the closure 26a.

- (c) introducing the coolable agent into a cavity of said cooling member (page 2 lines 5-11);
- (d) placing the cooling member into a refrigerating apparatus (page 2 lines 11-24);
- (e) retrieving said cooling member from said refrigerating apparatus after the coolable agent is cooled to below the ambient temperature (page 2 lines 20-24); and
- (f) engaging the cooling member with the body member (page 2 lines 43-56).

Solomon does not teach that the vessel member and top closure are engageable with each other when attached to the body member. Hall teaches that it is known to provide a method wherein the vessel member and top closure are engageable with each other when attached to the body member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Solomon with the vessel member and top closure being engageable with each other when attached to the body member, as taught by Hall, in order to remove the vessel member and top closure as a unit.

7. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solomon (U.S. 1,954,370) in view of Hall (U.S. 1,033,009), as applied to claim 5 above, and further in view of Svehaug (U.S. 5,435,256). The modified method of Solomon disclose the claimed invention except for the seal. Svehaug teaches that it is known to provide a seal on an inner vessel (see element 30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the

Art Unit: 3781

modified container of Solomon with the seal, as taught by Johnson, in order to prevent leakage of the contents within the vessel.

Response to Arguments

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment filed March 19, 2009.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the secondary compartment of the vessel.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

Art Unit: 3781

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony D Stashick/
Supervisory Patent Examiner, Art Unit 3781

/Niki M. Eloshtway/
Niki M. Eloshtway
Examiner
Art Unit 3781

nme